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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,873	11/21/2003	Brian W. Niski	2003-122A	4442
38382	7590	04/21/2004	EXAMINER	
JOHN P. COSTELLO 331 J STREET, SUTIE 200 SACRAMENTO, CA 95814			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/718,873

Applicant(s)

NISKI ET AL.

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/21/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 11212003.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 6, 10-12, 14, 15, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Raiford (US 115,238).

Raiford discloses a bib including an expandable collar (see portion proximate the hem, at upper edge of napkin A) and a flexible hoop (B) communicating with the collar. The hoop (B) has a "memory quality" as claimed and allows the expansion and contraction of the hoop and collar (see col. 2, lines 4-7). The hoop substantially encircles the collar (see inner edge of hem, which is encircled by hoop B), as claimed. The hoop has a pair of ends which can be expanded apart to open the collar. The hoop B ends in opposing arms exterior to the ends of the hoop (i.e. the ends of the hoop being approximately at the end of the hem, with the arms extending outwardly therefrom), as in claims 3 and 12. The arms have a grasping surface (a) as in claim 3. The collar includes an outer border (see upper edge of hem) and a neck opening (see opening shown in Fig. 1) as in claims 6 and 15. The bib includes a body portion A extending below the hoop and collar as in claim 19. Regarding claims 5 and 14, the hoop comprises contoured side sections, since the sides of the hoop are seen to be in a

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curved, concave shape. This shape allows the hoop to curve against the neck and to fit to the inside of the wearer's shoulders, thus not impeding the movement of the wearer's shoulders. For example, the shape of the hoop allows the wearer to flex the shoulders upwardly without being impeded by the hoop due to the fact that the hoop curves inwardly and rests at the innermost portions of each shoulder. To this extent, the hoop is contoured so as to fittingly mold with the wearer's shoulders, as claimed.

3. Claims 1-4, 6, 10-13, 15, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Long (US 2,430,941)

Long discloses a bib including an expandable collar (12) and a flexible hoop (14) communicating with the collar. The hoop (14) has a "memory quality" as claimed and allows the expansion and contraction of the hoop and collar. The hoop substantially encircles the collar (see inner edge of hem 12, which is encircled by hoop 14), as claimed. The hoop has a pair of ends which can be expanded apart to open the collar. The hoop 14 ends in opposing arms (15,17,18,19) exterior to the ends of the hoop, comprising a grasping surface, as in claims 3 and 12. The ends overlap (when the tongue 18 and cutout 16 are attached), as in claims 4 and 13. The collar includes an outer border (see upper/outer edge of hem) and a neck opening (see opening shown in Fig. 1) as in claims 6 and 15. The bib includes a body portion (see Fig. 1) extending below the hoop and collar as in claim 19.

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4. Claims 1, 2, 6, 8, 10, 11, 15, 17, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Martinez (US 3,042,930)

Martinez discloses a bib including an expandable collar (8) and a flexible hoop (6) communicating with the collar. The hoop (8) has a "memory quality" as claimed and allows the expansion and contraction of the hoop and collar. The hoop substantially encircles the collar (see inner edge of collar 8, which is encircled by hoop 8), as claimed. The hoop has a pair of ends which can be expanded apart to open the collar. The collar includes an outer border (see outermost edge of sheath or collar 8) and a neck opening (see opening shown in Fig. 1, within innermost edge of sheath/collar 8; or alternatively, see opening at top of circle formed by sheath 8 as seen in Fig. 1) as in claims 6 and 15. The collar 8 is comprised of paper (col. 1, line 49), which inherently is an absorbent material as in claims 8 and 17. The bib includes a body portion (7 or 5) extending below the hoop and collar as in claim 19.

5. Claims 1-3, 6-12, and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Swearingen (US 2,655,659)

Swearingen discloses a garment having a structure which forms a bib as claimed. The garment includes an expandable upper portion (waistband 11 with pocket 14) forming a collar and a flexible hoop (16) communicating with the collar. The hoop (16) has a "memory quality" as claimed and allows the expansion and contraction of the hoop and collar. The hoop substantially encircles the collar as claimed (see inner surface of collar portion in Fig. 8). The hoop has a pair of ends which can be expanded

apart to open the collar. The hoop 14 ends in opposing arms (portion proximate bends 19 and loops 20) exterior to the ends of the hoop, comprising a grasping surface, as in claims 3 and 12. The collar includes an outer border (see upper portion of band 11) and an opening (see opening shown in Figs. 1 and 3) as in claims 6 and 15. The collar portion includes an elastic material (12; col. 2, lines 20-21) combined along the neck opening creating an expandable region as in claims 7, 16, and 20. The bib includes a body portion (see Fig. 2) extending below the hoop and collar as in claim 19. The collar portion (11,14) is comprised of fabric or plastic (col. 2, line 18); since plastic is inherently a non-absorbent material and fabric is inherently an absorbent material, the structure of claims 8-9 and 17-18 is met. Although Swearingen does not disclose the use of the garment on the neck and chest of a wearer, and thus does not disclose that the upper band or collar of the garment is to be worn around the neck of the wearer, such limitations are drawn to the intended use and function of the device. The structure of Swearingen is clearly capable of being positioned on an upper body of a wearer, including positioning the upper band portion around the neck. There is no structure disclosed by Swearingen which would prevent such use. The structural elements which are recited in the claims are met by Swearingen, and the recitation of the use of the device around the wearer's neck does not further define the claimed structure over that of Swearingen. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raiford (US 115,238) in view of Swearingen (US 2,655,659).

Raiford disclose a bib having the structure as recited in claims 1, 6, 10 and 15, as discussed above. Further, with regard to claim 20, the bib of Raiford includes a collar (see portion proximate the hem, at upper edge of napkin A) and a flexible hoop (B) communicating with the collar. The hoop (B) has a "memory quality" as claimed and allows the expansion and contraction of the hoop and collar (see col. 2, lines 4-7). The collar includes an outer border (see upper edge of hem) and a neck hole (see opening shown in Fig. 1) as claimed. The bib includes a body portion (A) extending below the hoop and collar as in claim 20. Raiford does not disclose an elastic material along the neck opening, however, as in claims 7, 16, and 20. It is known to provide elastic in the hem of collar or band portions which are hemmed to form a tubular member in which is housed a hoop of shape memory material. Swearingen discloses such a hem or pocket at 14, in which is provided a hoop 16 made of shape memory material. The hem or pocket 14 of Swearingen includes elastic threads or cords 12, in order to urge the waist band or hem into contracted position (col. 2, lines 20-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide

elastic material in the hem which forms the collar portion of the garment of Raiford, in order to urge the hemmed portion into a contracted position for a better fit around a curved portion of the body, as taught by Swearingen.

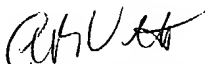
### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Amy B. Vanatta  
Primary Examiner  
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